THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.6515 and 22318 OF 2005

Dated:13.7.2006.

Between:

Smt P.Subbulu … petitioner

And

The Commissioner,
Municipal Corporation of Guntur … respondent

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NOs.6515 and 22318 OF 2005

COMMON ORDER:

1. Heard Sri P.Venkateswarlu, counsel representing the writ petitioner in W.P.No.6515 of 2005, Sri Y.Ravinder Kumar, counsel representing the writ petitioner in W.P.No.22318 of 2005 and Sri Venkat Ratnam, learned Standing Counsel representing the Commissioner, Municipal Corporation of Guntur. The writ petitioner is the same in both the writ petitions.

2. W.P.No.6515 of 2005 is filed praying for a writ of mandamus declaring the notification in R.C.No.993/5/A2 dated 22.3.2005 passed by the respondent so far as Venlock Market is concerned as illegal, contrary to law and consequently direct the respondent to consider the case of the petitioner for reducing 3/4th of the lease amount for the year 2004/2005 and to renew the lease for the year 2005-2006 on enhancement of the 10% on the reduced amount and to pass such other suitable orders.

3. The factual details narrated in both the writ petitions appear to be substantially one and the same. It is stated by the writ petitioner that a representation in detail was made on 10.10.2005 to the respondent narrating all the facts. The impugned proceedings in W.P.No.22318 of 2005 is R.C.No.763/04/A2, dated 01.10.2005 issued by the second respondent wherein demand was made for the amount payable to the

respondent – Municipal Corporation. Several other grounds are raised and contentions at length were made by the respective counsel representing the parties.

4. For the purpose of convenience, inasmuch as the facts appear to be common in both the writ petitions, the facts, as narrated in W.P.No.6515 of 2005, be adopted. Counter affidavits are filed and the writ petitions are being resisted by the Commissioner, Municipal Corporation of Guntur.

5. It is stated in the affidavit filed in support of the writ petition that the Municipal Corporation of Guntur was running Venlock market within its municipal limits and in the said market, the Corporation provided shops and open space for sale of fruits, flowers, mutton and fish etc and it consists of as many as 184 shops. It was established in the year 1904 during the British regime. The Corporation had been collecting market charges/fee from the licensees who were running the shops in the said market. It is also stated that the respondent-Commissioner exercising powers under Section 533 to 535, 539 and 548 of Hyderabad Municipal Corporation Act, 1955 issued tender notification dated 27.4.2004 proposing to grant lease for collection of the market fee in respect of the said market for the year 2004-2005. The petitioner participated in the said auction and became the highest bidder offering Rs.7,75,000/- as lease amount. As per the said notification 1/4th of the amount shall be deposited immediately after finalisation of the auction and the remaining 3/4th to be paid in phased manner through advanced cheques. It is also stated that though the petitioner became highest bidder, the respondent had not finalized the tender and hence, he filed W.P.No.6680 of 2004 questioning the said action and this Court by order dated 23.4.2004 disposed of the writ petition directing the respondent to take appropriate action either to finalise or to go for fresh auction by issuing notification. It is stated that

pursuant to the said orders, his tender was finalized and he was issued notice dated 1.6.2004 asking to deposit 1/4th of the amount and he had deposited an amount of Rs.1,93,750/- being 1/4th of the lease amount and on such deposit, the market was handed over to him on 1.6.2004. It is stated that on 19.6.2004, the respondent Commissioner in order to construct new market, got demolished the old market and handed over to the contractor and on the said day they demolished 117 shops out of 184 shops and the petitioner submitted representation to the respondent on 10.8.2004 requesting him to reduce license amount in view of the demolition of part of the market as he could not realize the market fee. Thereafter, he submitted number of representations. His power of attorney holder submitted all the representations on his behalf. The remaining shops were also demolished on 25.12.2004 leaving only 12 shops. Since, virtually no market is running and he is not in a position to collect any market fee from the market. In the said circumstances, he made representation to reduce lease amount proportionate to the loss sustained by him. It is further stated that Standing Committee considered his request and passed resolution No.500 on 19.2.2005 resolving to reduce lease amount of 50% and further resolved to renew the lease by enhancing 10% on the reduced amount. It is also stated that the Deputy Commissioner of the respondent-Corporation, contrary to the resolution of the Standing Committee, issued orders dated 01.3.2005 reducing only 25% and in the said order the petitioner was asked to pay Rs.3,87,500/- being balance 3/4th of the lease amount. Inasmuch as the said orders being contrary to the resolution passed by the Standing Committee and also the ground realities, the petitioner submitted representation on 4.3.2005 requesting the Corporation to reduce the amount and to issue further orders. It is also further stated that again, proposing to conduct auction of the market in question,

notification was issued on 22.3.2005 and the auction was scheduled to be held on 29.3.2005. Several other factual details also had been narrated in paras 6 and 7 of the affidavit.

6. As already referred to supra, in W.P.No.22318 of 2005 the same facts were repeated and the demand made on 01.10.2005 by the second respondent had been questioned.

7. Inasmuch as counter filed in W.P.No.22318 of 2005 reflects certain other details, the same is being adopted as counter affidavit in both these writ petitions. It was pleaded in the counter affidavit by the Commissioner, Municipal Corporation of Guntur as hereunder:

> " It is submitted that the Venlock market was auctioned for the year 2004-2005. The petitioner became the highest bidder for Rs.;7,75,000/- lease hold period. According to the auction notification the highest bidder has to deposit 1/4th of the highest bid amount initially before taking over of the premises and the remaining of 3/4th amount has to be paid in three installments prior to three months before the end of the lease period.
>
> As the highest bidder has not paid 1/4th amount under initial deposit amount and expecting further highest revenues, the respondent has published auction cum tender notice inviting the competitive bids. Then the petitioner has approached court of law vide W.P.No.6680 of 2004 wherein the Hon'ble A.P.High Court has granted interim orders on 07.4.2004 directing the respondent not to finalise the tenders. The Hon'ble Court has issued final orders on 23.4.2004 directing to finalise the tender either in favour of the petitioner or to go for fresh auction under profitable measures.
>
> Thereafter on discussing the merits of the issue, the respondent has entrusted the collection of asseel to the petitioner w.e.f. 02.6.2004. The petitioner has paid the 1/4th amount totally by 12.6.2004. The respondent has issued orders on 23.6.2004 to collect the asseel by paying the three remaining installments by 01.7.2004, 01.9.2004 and by 01.12.2004 (copy enclosed).
>
> It is submitted that 117 old stalls out of 184 stalls have been dismantled on 19.6.2004 for the reconstruction of shopping complex. Further 55 shops were demolished in the month of December, 2004. Though the shops dismantled for

reconstruction, the vendors of the existing stalls are running their business on road margin of the same area, i.e., in front of the demolished complex. The petitioner has been collecting the asseel from the vendors of the road margins as per the rates notified. The petitioner has not paid the balance amount under 3/4th bid.

It is submitted that the petitioner made representation represented that he has sustained huge loss due to demolish of the shopping complex and requested to reduce the lease amount, further represented that the lease period can be extended for further year. The standing committee in resolution No.500 dated 19.2.2005 has resolved to reduce 50% and lease amount relating to the year 2004-05 and fixed lease at Rs.4,25,000/- for further year i.e., for 2005-2006 because the construction of shopping complex is not completed. As the resolution No.500 dated 19.2.2005 of the Standing Committee is not specific, the subject has again placed before the standing committee. The standing committee in resolution No.521 dated 28.3.2005 has resolved to reduce 50% of the lease amount relating to the year 2004-2005 and fixed the lease for 2005-2006 at 25% over the lease of 2004-2005 till the completion of complex since the construction of shopping complex is in initial stage subject to the condition that the balance lease amount of relating 2004-2005 has to be paid by 29.3.2005 failing which fresh auction should be conducted for 2005-2006.

It is submitted that the respondent has issued auction notification of Venlock market on 22.3.2005 along with other markets for the year 2005-2006 i.e, before the resolution of the standing committee dated 28.3.2005. The petitioner has not represented grievance in regards to his dissatisfaction in reduction of the lease amount for the year 2004-2005. The petitioner has been issued with the notice dated 31.3.2005 informing to pay the balance lease relating to 2004-05 within 24 hours of the receipt to notice. The petitioner has received the said notice on 02.4.2005 (copy enclosed). As the matter stood thus, the petitioner has filed W.P.No.6515 of 2005. The Hon'ble High Court in W.P.M.P.No.8673 of 2005 has granted interim direction to consider the case of the representation dated 04.3.2005 and directed not to finalise the tenders.

The petitioner has approached the Hon'ble Court on one hand and on the other hand he has made representation to the respondent on 2.4.2005 (copy enclosed) requesting to consider his application dated 04.3.2005. In view of the

interim orders dated 28.3.2005 the respondent has postponed the tenders and commenced the departmental collection w.e.f.09.4.2005. Though the lease period has expired by 31.3.2005 and as the petitioner has not complied with notice dated 31.3.2005 has collected the fee up to 08.4.2005.

It is pertinent to note that the petitioner is collecting the market fee and on the other side making representation to reduce the lease amount. The extension of lease period beyond 2004-05 is not mandatory and the petitioner has no right to demand the extension. The standing committee however felt the situation of the petitioner and resolved to extend the lease period during 2005-06 till the completion of shopping complex on basis of 25% of enhancement over the 50% of the lease amount of 2004-05. But the petitioner has been collecting the fee from all shops the vendors of the road margins. The petitioner has acted with mala fide intention to get the lease of shops for further one year even after the completion of complex.

It is submitted that there is discrepancy in fixing the lease amount for the years 2004-05 was Rs.5,82,000/-, 2005-06 as Rs.3,87,500/-. Finally the petitioner was asked to pay Rs.3,87,500/- as lease amount for 2004-05. There will be no discrepancy in regard to the lease amount for 2005—06 as 25% enhancement over Rs.3,87,500/-. As the petitioner has failed to comply with the notice dated 31.3.2005, the respondent is completed to cancel the lease for 2005-06 and rough remedies for the realization of balance lease of 2004-05 i.e., Rs.1,93,750/-. It is false to say that the standing committee has passed the resolution on 28.3.2005 knowing the orders of the A.P. High Court. The subjects of the standing committee which shall be discussed will be finalized two days prior to the date of meeting. As such there is no chance to the standing committee to know whether the petitioner has approached the court. The petitioner himself has paid the amount of Rs.1,93,750/- on 25.4.2005 towards the balance lease amount of 2004-05 and requested to extend the period of lease for one year after completion of the complex. The petitioner also was authorized for the collection of fee from 01.4.2005. Again the petitioner made representation dated 09.5.2005 to the first respondent and requested to extend the period of lease upto 31.3.2006. When the request of the petitioner replaced before the meeting of the Corporation on 18.6.2005. It was resolved to permit the lease period up to the completion of construction as resolved by the

standing committee dated 28.3.2005. Accordingly, the petitioner has been served with an endorsement dated 01.7.2005 to pay 1/4th of the lease for 2005-06 and to enter in to the agreement. But the petitioner has not paid the 1/4th amount and failed to enter into the agreement, though he is collecting the fees from 01.5.2005.

It is submitted that the notice dated 16.9.2005 has been served on petitioner informing to pay lease amount and to enter into the agreement within seven days. The petitioner even after the receipt of the notice did not pay even 1/4th of the lease @ 25% excess over the reduced lease of 2004-05. This reveals that the petitioner is interested to collect the fee without paying any amount to the respondent even under protest.

It is submitted that the petitioner failed to pay the lease amount of 2005-06 and to enter into the agreement, the respondent has issued proceedings dated 01.10.2005 cancelling the lease of the petitioner w.e.f.01.10.2005. Further the petitioner was asked to remit lease amount from 28.4.2005, i.e., 01.5.2005 to 30.9.2005 for which he has collected the fee from the vendors. The 2nd respondent who has signed the proceedings is an authorized gazetted officer by the first respondent under the provisions of Section 106(1) & (2) of H.M.C.Act. The things performed by the 2nd respondent shall for all purposes be deemed to have been performed and done by the Commissioner. The 2nd respondent was delegated with the powers of the Commissioner which relates to the revenue of the Corporation. Therefore, the proceedings issued by the 2nd respondent are legal and enforceable. It is false to say that the 2nd respondent has the instances with same to Sk.Subhani with mala fide intention.

The petitioner representations are connected with the public funds. If they are considered the same will affect the financial loss and against the rules. There is no justice in demanding the extension of lease period beyond the period originally awarded. The extension of lease up to the completion of shopping complex accorded on basis of the demolition of shopping complex till the completion during 2005-06 for which the petitioner has accepted and began the collection of fee from 01.5.2005 to 30.9.2005. The respondent has to see the benefit of all the citizens of the town but not for

one citizen. The collection of fee from 01.10.2005 is departmentally and not entrusted to any body as alleged.

It is submitted that the respondent has commenced the collection of asseel. The revenues may sometime lesser than the revenue collected by lessee. Due to the said reason the respondent can not award the lease as requested by the petitioner or someone else. It is false to say that the 2nd respondent is trying to handover the market some Sk.subhani. No lease can be awarded by the respondents at their whims and fancies. As the petitioner has not complied with the notice dated 16.9.2005 there is no justification in awarding the lease without payment of deposit for 2005-06. The petitioner himself has satisfied with the reduction of 50% of lease of year 2004-05 and paid the dues balance for 2004-05 on 25.4.2005. Though the lease period was extended up to completion the shopping complex with 25% enhancement over the lease amount for 2004-05 (as reduced to 50%) on sympathetic ground the petitioner is struggling to get the lease for one more year after completion of the complex, which cannot be sustained. The petitioner though permitted for the collecting of fee from 28.4.2005 has not think about the payment of even initial deposit for 2005-06. Due to delay in handing over the premises and due to demolition of major portion of shops and as the petitioner is collecting fee from margin vendors, the lease amount for 2004-05 was reduced to 50%. There is no binding clause on the respondent to extend the lease period beyond the 2004-05. Keeping loss sustained by the petitioner the lease period up to the completion of shopping complex was considered."

8. In the light of the respective pleadings of the parties in these writ petitions this court is satisfied that the writ petitioner is not having any legal right whatsoever, to force the Corporation in question to act in a particular manner. However, several factual details had been narrated and it is also stated that a representation in detail is said to have been made to the Commissioner, Municipal Corporation on 10.10.2005. The main ground of attack appears to be that contrary to the resolution of the Standing Committee, the Commissioner cannot further reduce the concession which had been given by the Standing Committee. It is

needless to say that this is a matter to be considered in accordance with law by the respondent-Corporation.

9. Inasmuch as all the details had been narrated in the representation dated 10.10.2005, taking the over all facts and circumstances into consideration, the respondent in W.P.No.6515 of 2005 and the first respondent in W.P.No.22318 of 2005 is hereby directed to consider the representation of the petitioner dated 10.10.2005 and pass appropriate orders, in accordance with law, within two weeks from today.

10. The writ petition is disposed of accordingly. No order as to costs.

11. It is needless to say that by virtue of the disposal of the writ petitions, the interim orders automatically would lapse.

13.7.2006.

mdaa